

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PATRICIA LUCIO,

Plaintiff,

v.

STEMILT GROWERS, LLC, and
STEMILT AG SERVICES, LLC,

Defendants.

NO: 1:15-CV-3082-TOR

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted.

Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the

1 applicable legal principles, and it does not presumptively entitle parties to file
2 confidential information under seal.

3 **2. “CONFIDENTIAL” MATERIAL**

4 “Confidential” material shall include the following documents and tangible
5 things produced or otherwise exchanged:

- 6 (1) Medical records, if any, that are produced;
- 7 (2) Personnel file materials of Plaintiff and other employees of Defendant(s);
- 8 (3) Employee contact information;
- 9 (4) Individual rights of privacy information;
- 10 (5) Customer contact information;
- 11 (6) Defendants’ non-public organizational information, annual reports, and
12 tax returns; and
- 13 (7) Other documents properly designated as confidential pursuant to the
14 requirements in Section below.

15 **3. SCOPE**

16 The protections conferred by this agreement cover not only confidential
17 material (as defined above), but also (1) any information copied or extracted from
18 confidential material; (2) all copies, excerpts, summaries, or compilations of
19 confidential material; and (3) any testimony, conversations, or presentations by
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1 parties or their counsel that might reveal confidential material. However, the
2 protections conferred by this agreement do not cover information that is in the
3 public domain or becomes part of the public domain through trial or otherwise.

4 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

5 4.1 Basic Principles. A receiving party may use confidential material that is
6 disclosed or produced by another party or by a non-party in connection with this
7 case only for prosecuting, defending, or attempting to settle this litigation.
8 Confidential material may be disclosed only to the categories of persons and under
9 the conditions described in this agreement. Confidential material must be stored
10 and maintained by a receiving party at a location and in a secure manner that
11 ensures that access is limited to the persons authorized under this agreement.

12 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
13 otherwise ordered by the court or permitted in writing by the designating party, a
14 receiving party may disclose any confidential material only to:

15 (a) the receiving party's counsel of record in this action, as well as
16 employees of counsel to whom it is reasonably necessary to disclose the
17 information for this litigation;

18 (b) a party, the officers, directors, managers, human resources
19 employees, and in house counsel of the receiving party to whom disclosure is
20 reasonably necessary for this litigation;

1 (c) experts and consultants to whom disclosure is reasonably necessary
2 for this litigation and who have signed the “Acknowledgment and Agreement to Be
3 Bound” (Exhibit A), which includes each such person’s clerical and support staff;

4 (d) the court, court personnel, and court reporters and their staff;

5 (e) copy or imaging services retained by counsel to assist in the
6 duplication of confidential material, provided that counsel for the party retaining
7 the copy or imaging service instructs the service not to disclose any confidential
8 material to third parties and to immediately return all originals and copies of any
9 confidential material;

10 (f) during their depositions, witnesses in the action to whom
11 disclosure is reasonably necessary;

12 (g) potential who have signed the “Acknowledgment and Agreement
13 to Be Bound” (Exhibit A), unless otherwise ordered by the court;

14 (h) the author or recipient of a document containing the information
15 or a custodian;

16 (i) the videographer who videotapes Confidential Information at a
17 deposition in this litigation;

18 (j) any mediator or discovery referee in this litigation, and employees
19 and personnel of said mediator or discovery referee;

1 (k) any other individuals agreed to in writing by the designating
2 party.

3 4.3 Filing Confidential Material. Before filing confidential material or
4 discussing or referencing such material in court filings, the filing party shall notify
5 the designating party to determine whether the designating party will remove the
6 confidential designation, whether the document can be redacted, or whether a
7 motion to seal or stipulation and proposed order is warranted. Local Civil Rule
8 5(g) sets forth the procedures that must be followed and the standards that will be
9 applied when a party seeks permission from the court to file material under seal.

10 **5. DESIGNATING PROTECTED MATERIAL**

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

12 Each party or non-party that designates information or items for protection under
13 this agreement must take care to limit any such designation to specific material that
14 qualifies under the appropriate standards. The designating party must designate for
15 protection only those parts of material, documents, items, or oral or written
16 communications that qualify, so that other portions of the material, documents,
17 items, or communications for which protection is not warranted are not swept
18 unjustifiably within the ambit of this agreement.

19 Mass, indiscriminate, or routinized designations are prohibited.

20 Designations that are shown to be clearly unjustified or that have been made for an

1 improper purpose (e.g., to unnecessarily encumber or delay the case development
2 process or to impose unnecessary expenses and burdens on other parties) expose
3 the designating party to sanctions.

4 If it comes to a designating party's attention that information or items that it
5 designated for protection do not qualify for protection, the designating party must
6 promptly notify all other parties that it is withdrawing the mistaken designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in
8 this agreement, or as otherwise stipulated or ordered, disclosure or discovery
9 material that qualifies for protection under this agreement must be clearly so
10 designated before or when the material is disclosed or produced.

11 (a) Information in documentary form: (e.g., paper or electronic
12 documents and deposition exhibits, but excluding transcripts of depositions or
13 other pretrial or trial proceedings), the designating party must affix the word
14 "CONFIDENTIAL" to each page that contains confidential material. If only a
15 portion or portions of the material on a page qualifies for protection, the producing
16 party also must clearly identify the protected portion(s) (e.g., by making
17 appropriate markings in the margins).

18 (b) Testimony given in deposition or in other pretrial or trial
19 proceedings: the parties must identify on the record, during the deposition, hearing,
20 or other proceeding, all protected testimony, without prejudice to their right to so

1 designate other testimony after reviewing the transcript. Any party or non-party
2 may, within fifteen days after receiving a deposition transcript, designate portions
3 of the transcript, or exhibits thereto, as confidential.

4 (c) Other tangible items: the producing party must affix in a
5 prominent place on the exterior of the container or containers in which the
6 information or item is stored the word "CONFIDENTIAL." If only a portion or
7 portions of the information or item warrant protection, the producing party, to the
8 extent practicable, shall identify the protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
10 failure to designate qualified information or items does not, standing alone, waive
11 the designating party's right to secure protection under this agreement for such
12 material. Upon timely correction of a designation, the receiving party must make
13 reasonable efforts to ensure that the material is treated in accordance with the
14 provisions of this agreement.

15 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

16 6.1 Timing of Challenges. Any party may challenge a designation of
17 confidentiality at any time. Unless a prompt challenge to a designating party's
18 confidentiality designation is necessary to avoid foreseeable, substantial
19 unfairness, unnecessary economic burdens, or a significant disruption or delay of
20 the litigation, a party does not waive its right to challenge a confidentiality

1 designation by electing not to mount a challenge promptly after the original
2 designation is disclosed.

3 6.2 Meet and Confer. The parties must make every attempt to resolve any
4 dispute regarding confidential designations without court involvement. Any
5 motion regarding confidential designations or for a protective order must include a
6 certification, in the motion or in a declaration or affidavit, that the movant has
7 engaged in a good faith effort to meet and confer with other affected parties in an
8 effort to resolve the dispute without court action. The certification must list the
9 date, manner, and participants to the conference. A good faith effort to confer
10 requires a face-to-face meeting or a telephone conference.

11 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
12 court intervention, the designating party may file and serve a motion to retain
13 confidentiality. The burden of persuasion in any such motion shall be on the
14 designating party. Frivolous challenges, and those made for an improper purpose
15 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
16 expose the challenging party to sanctions. All parties shall continue to maintain
17 the material in question as confidential until the court rules on the challenge.

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**7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION.**

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

- (a) promptly notify the designating party in writing and include a copy of the subpoena or court order;
- (b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and
- (c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement,

1 and (d) request that such person or persons execute the “Acknowledgment and
2 Agreement to Be Bound” that is attached hereto as Exhibit A.

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4 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR
OTHERWISE PROTECTED MATERIAL**

5 When a producing party gives notice to receiving parties that certain
6 inadvertently produced material is subject to a claim of privilege or other
7 protection, the obligations of the receiving parties are those set forth in Federal
8 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
9 whatever procedure may be established in an e-discovery order or agreement that
10 provides for production without prior privilege review. Parties shall confer on an
11 appropriate non-waiver order under Fed. R. Evid. 502.

12 **10. NONTERMINATION AND RETURN OF DOCUMENTS**

13 Within 60 days after the termination of this action, including all appeals,
14 each receiving party must return all confidential material to the producing party,
15 including all copies, extracts and summaries thereof. Alternatively, the parties
16 may agree upon appropriate methods of destruction.

17 Notwithstanding this provision, counsel are entitled to retain one archival
18 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
19 correspondence, deposition and trial exhibits, expert reports, attorney work
20 product, and consultant and expert work product as part of the client file, which

1 either party may maintain for up to six years as recommended by the WSBA *Guide*
2 *to Best Practices for Client File Retention and Management*, even if such materials
3 contain confidential material. While counsel may retain Confidential material in
4 compliance with the WSBA's *Guide to Best Practices for Client File Retention*
5 *and Management*, counsel may not disclose any Confidential material in any way
6 that would violate this Confidentiality Agreement.

7 The confidentiality obligations imposed by this agreement shall remain in
8 effect until a designating party agrees otherwise in writing or a court orders
9 otherwise.

10 DATED September 10, 2015.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, [print or type full name], of
_____, [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Eastern District of
Washington on _____ [date] in the case of PATRICIA LUCIO v.
STEMILT GROWERS, LLC, and STEMILT AG SERVICES, LLC. (Cause No.
No. 1:15-CV-03082 TOR). I agree to comply with and to be bound by all the terms
of this Stipulated Protective Order and I understand and acknowledge that failure
to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person
or entity except in strict compliance with the provisions of this Order.

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1 I further agree to submit to the jurisdiction of the United States District
2 Court for the Eastern District of Washington for the purpose of enforcing the terms
3 of this Stipulated Protective Order, even if such enforcement proceedings occur
4 after termination of this action.

5 Date: _____

6 City and State where sworn and signed: _____

7 Printed name: _____

8 Signature: _____